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**UNITED NATIONS HUMAN RIGHTS EXPERTS
EXPRESS
CONTINUED CONCERN ABOUT SITUATION OF
GUANTANAMO BAY DETAINEES**

4 February 2005

The following statement was issued today by six United Nations human rights experts, listed below:

In January 2005 the detention centre at the United States Naval Base in Guantánamo Bay entered into its fourth year of existence, and many of the inmates are completing their third year of virtually *incommunicado* detention, without legal assistance or information as to the expected duration of their detention, and in conditions of detention that, according to numerous observers, amount to inhuman and degrading treatment.

The Working Group on Arbitrary Detention, a group of experts appointed by the United Nations Commission on Human Rights to seek and receive information from governments and non-governmental organizations, and to report to the Commission on cases of detention inconsistent with international human rights standards, has been concerned about the situation at Guantánamo Bay since the establishment of the detention centre. Already on 22 January 2002, the then Chairman-Rapporteur of the Working Group, Louis Joinet, sent a letter to the Government of the United States of America seeking an invitation to visit the detention centre at the naval base in order to examine, on the spot, the legal aspects of detention. By a second letter sent on 25 October 2002, the Working Group requested that the United States Government provide responses to a series of factual and legal questions concerning the legal situation of the detainees in Guantánamo Bay.

In June 2004, the Chairperson-Rapporteur of the Working Group on Arbitrary Detention, the Special Rapporteur on torture, the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, and the Special Rapporteur on the independence of judges and lawyers requested the United States, as well as Iraq and Afghanistan, to invite these experts to visit those persons detained on grounds of terrorism, including in Guantánamo Bay. While the United States Government—the only Government to respond to date—has not yet agreed to this request, it has indicated an interest in establishing a dialogue with the experts to consider the possibility of a visit.

The year 2004 saw a number of developments regarding the situation of the Guantánamo detainees. A number of detainees were released. The Supreme

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Court of the United States rejected the claim of the Government that it could deny access to *habeas corpus* proceedings to the Guantánamo Bay detainees. A United States District Court ruled that it is for the judiciary and not for the executive power to establish whether the Third Geneva Convention applies to persons deprived of their liberty during the hostilities in Afghanistan. The same court stated that the exclusion of the defendant from certain hearings and from access to evidence used against him was unlawful. In response to these judicial decisions, the United States established Combatant Status Review Tribunals (CSRTs) and an Administrative Review Board (ARB), which will review, on an annual basis, whether an inmate continues to pose a threat to the United States or its allies, or whether there are other factors bearing upon the need for continued detention. As recently as 31 January 2005, a United States Federal District Court stated in a judgment concerning Guantánamo detainees that 'Although this nation unquestionably must take strong action under the leadership of the commander in chief to protect itself against enormous and unprecedented threats, that necessity cannot negate the existence of the most basic fundamental rights for which the people of this country have fought and died for well over two hundred years'.

These developments are, however, insufficient to dispel the serious concerns that the mandate holders continue to have with respect to the situation:

- (a) Both the international armed conflict in Afghanistan and the war in Iraq have been over for more than 18 months now. The Third Geneva Convention, dealing with prisoners of war, mandates that any prisoner of war must be released "without delay after the end of hostilities". The legal basis for the continued detention of the Guantánamo Bay inmates is therefore unclear. In any event, many of them were arrested in countries which were not parties to any armed conflict involving the United States of America;
- (b) The lack of clarity concerning the legal basis on which the Guantánamo detainees are deprived of their freedom also means that both the detainees and their families are in a state of uncertainty regarding the remaining duration of the detention;
- (c) The exact number and the names of the persons detained at Guantánamo Bay continue to be unknown. This situation is extremely disconcerting and is conducive to the unacknowledged transfer of inmates to other, often secret, detention facilities, whether run by the United States or by other countries. This situation is of particular concern to the Working Group on Enforced or Involuntary Disappearances;
- (d) Concerns have been voiced regarding the independence of both the Combatant Status Review Tribunals and the Administrative Review Board, and with respect to the fairness of the proceedings before them. In particular,

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most detainees do not have access to legal counsel, and much of the evidence on which the decision to detain them is based is not disclosed to them;

(e) The need to objectively assess the allegations of torture, and other cruel, inhuman or degrading treatment or punishment, particularly in relation to methods of interrogation of detainees, that have been brought to the attention of the Special Rapporteur on torture;

(f) The conditions of detention, especially of those in solitary confinement, place the detainees at significant risk of psychiatric deterioration, possibly including the development of irreversible psychiatric symptoms;

(g) Most detainees do not know whether the United States Government intends to raise criminal charges against them or not. The procedural rules governing the Military Commissions set up to try those detainees who will face criminal charges raise misgivings similar to those voiced with regard to the Combatant Status Review Tribunals: doubts regarding the actual independence of the Commissions, and concerning the fairness in the respective positions (or "equality of position") between prosecution and defense, in particular with regard to access to evidence. Moreover, the mandate holders recall that where the conditions of detention are such as to subject a defendant to inhuman or degrading treatment, or to otherwise gravely weaken him physically and psychologically, equality is compromised and any imprisonment upon conviction tainted with arbitrariness.

In conclusion, the United Nations human rights experts once more confirm that the right and duty of all States to use all lawful means to protect their citizens against death and destruction brought about by terrorists must be exercised in conformity with international law; lest the whole cause of the international fight against terrorism be compromised.

The experts are:

Leïla Zerrougui, Chairperson-Rapporteur of the Working Group on Arbitrary Detention of the United Nations Commission on Human Rights; Stephen J. Toope, Chairperson-Rapporteur of the Working Group on Enforced or Involuntary Disappearances of the Commission; Manfred Nowak, the Commission's Special Rapporteur on torture; Paul Hunt, the Commission's Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Leandro Despouy, the Commission's Special Rapporteur on the independence of judges and lawyers, and Cherif Bassiouni, Independent Expert appointed by the Secretary-General on the situation of human rights in Afghanistan.